UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
54th meeting
held on
Monday, 31 March 1997
at 3 p.m.
New York

SUMMARY RECORD OF THE 54th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.54
28 August 1997
ENGLISH
ORIGINAL: FRENCH

97-80971 (E)

READEX Best copy available

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (A/C.6/51/NUW/WG/L.1/Rev.1) (continued)

Article 21 (continued)

1. The CHAIRMAN said that, since delegations had reached agreement on the first three lines of article 21, paragraph 3, up to the words "control pollution of an international watercourse", they now had to decide whether to retain or delete the words "such as" along with subparagraphs (a), (b) and (c).

2. Mr. DEKKER (Netherlands), supported by Mr. CANELAS de CASTRO (Portugal), Mr. KUOKKANEN (Finland) and Mr. AL-WITRI (Iraq), recalled that during the consideration of the article in October 1996, 26 delegations had been in favour of including the examples contained in subparagraphs (a) and (b) and only 12 had been against. Some delegations had expressed the view that a framework convention should not provide examples, while others had felt that it was essential to mention a few of them, but without attributing to them any binding character, which explained the choice of the words "such as". The delegation of the Netherlands was therefore in favour of retaining the words "such as" together with paragraphs (a), (b) and (c).

3. Mr. PRANDLER (Hungary) said that he was in favour of retaining the three subparagraphs of paragraph 3. The introductory text of the paragraph was not binding in any way, since it merely exhorted the parties to consult with a view to arriving at mutually agreeable measures.

4. Ms. GAO Yanping (China) recalled the statement made by her delegation in the Drafting Committee, namely, that, while it could accept the introductory text to paragraph 3, it was firmly opposed to the inclusion of subparagraphs (a), (b) and (c).

5. Mr. RAO (India), Mr. SVIRIDOV (Russian Federation), Mr. ISKIT (Turkey), Ms. VARGAS de LOSADA (Colombia) and Mr. LOAYZA (Bolivia) restated their positions in favour of the deletion of subparagraphs (a), (b) and (c).

6. The CHAIRMAN said that the views of those delegations would be duly reflected in the summary record of the meeting.

7. Ms. BARRETT (United Kingdom) recalled that the initial text of the International Law Commission had been somewhat rigid. The Netherlands had then made a much more detailed proposal. The text proposed by the Drafting Committee was therefore the result of a compromise. It listed fewer examples and was of a less binding nature. The delegation of the United Kingdom therefore supported the compromise text.

8. Mr. PULVENIS (Venezuela), Mr. OBEIDAT (Jordan), Mr. NGUYEN QUY BINH (Viet Nam), Mr. LOIBL (Austria), Mr. KASME (Syria), and Mr. ENAYAT (Iran) expressed support for the statement made by the representative of the United Kingdom and for the retention of paragraph 3 in its entirety.

9. Ms. LADGHAM (Tunisia) said that her delegation was in favour of retaining subparagraphs (a), (b) and (c). Failing that, the Committee should revert to the International Law Commission's initial formulation.

10. The CHAIRMAN observed that a rather clear majority of delegations supported the retention of the paragraph in its current form and said that the views of those delegations which were against its inclusion would be duly reflected in the summary record of the meeting.

11. Ms. GAO Yanping (China) said that the Commission's initial text was more acceptable and wished to know whether other delegations shared the same view.

12. The CHAIRMAN said that to return to the initial text would mean disregarding all the work done by both the Working Group and the Drafting Committee.

13. Mr. GONZALEZ (France), joined by Mr. CANELAS de CASTRO (Portugal) and Mr. DEKKER (Netherlands), said that the compromise text was clearly an improvement over the Commission's draft text and was more consistent with the nature of the framework convention.

14. Mr. PRANDLER (Hungary) said that the text under consideration was in fact the result of a double compromise between the Commission's initial text and the later proposals and between the supporters and opponents of a text of a more binding nature. That was why his delegation was firmly opposed to a return to the Commission's initial text and in favour of retaining the three subparagraphs.

15. The CHAIRMAN said that, given the reactions of the various delegations, it was impossible to revert to the Commission's initial text. He therefore proposed that paragraph 3 of article 21 should be adopted ad referendum, on the understanding that the positions of the delegations which had spoken against would be duly reflected in the summary record of the meeting.

16. It was so decided.

Article 22

17. The CHAIRMAN said that article 22 contained two footnotes referring to the terms "ecosystem" and "significant harm", which would be considered at a later stage.

18. Mr. DEKKER (Netherlands) said that the Biodiversity Convention also contained an article on the introduction of alien species in which the term "ecosystem" was used. His delegation was therefore opposed to replacing the word "ecosystem" with the words "biological balance" in article 22.

19. Ms. GAO Yanping (China) said that China too was a party to the Convention on Biological Diversity, but international watercourses were a case apart with special characteristics which justified a different terminology. Otherwise article 22 of the draft convention would duplicate article 8 of the Convention on Biological Diversity, which would not be desirable.

20. Mr. SVIRIDOV (Russian Federation) asked whether the term "ecosystems" would be considered in informal consultations, as had been decided with regard to article 20.

21. The CHAIRMAN said that matters of terminology were more easily resolved in informal consultations and suggested that article 22 should be adopted ad referendum, taking account of the two reservations with regard to the terms "ecosystems" and "significant harm".

22. It was so decided.

Article 23

23. Mr. ISKIT (Turkey) said that he remained of the opinion that the wording proposed by his delegation in note 33 of the report of the Drafting Committee would be preferable, but would not insist on reopening the debate provided that his position was reflected in the record.

24. Mr. GONZALEZ (France) said that, since article 23 was worded in fairly direct language, namely "States shall ... take all measures ... that are necessary to protect and preserve the marine environment", it should not at the same time include generic descriptions such as "generally accepted international rules and standards".

25. Mr. SALINAS (Chile) endorsed the view of the French delegation and believed that the wording "rules of international law in force" would be preferable.

26. The CHAIRMAN explained that article 23 was based on the provisions of article 211, paragraph 2, of the United Nations Convention on the Law of the Sea.

27. Mr. ROSENSTOCK (Expert Consultant) said that the wording currently before the Committee was the least confusing version.

28. Ms. GAO Yanping (China) said that the differences between the text of the Drafting Committee and the wording proposed by the Turkish delegation were insignificant, but nevertheless endorsed the Turkish version which, by virtue of its concision, was not at all confusing and would help to ensure the effective implementation of the convention.

29. Mr. NGUYEN QUY BINH (Viet Nam), supported by Mr. KASME (Syrian Arab Republic), said that he would like the wording adopted by the Drafting Committee to be retained. It seemed to his delegation that the Turkish reference to rules of international law in force would not help to ensure better implementation of the provisions of the Convention.

30. Mr. RAO (India) said that he preferred the Turkish proposal because of its concision.

31. Ms. VARGAS de LOSADA (Colombia) endorsed the Turkish proposal. Nevertheless, after the words "including estuaries" she proposed adding the phrase "using for this purpose the best practicable means at their disposal and in accordance with their capabilities", which was taken from article 194, paragraph 1, of the United Nations Convention on the Law of the Sea.

32. The CHAIRMAN said that, despite the support for the Turkish proposal, most delegations preferred the Drafting Committee's wording.

33. Mr. ISKIT (Turkey), pointing to the fact that a number of delegations had supported his proposal, asked the Chairman whether it would be preferable to hold consultations on the matter or to find another means of taking into consideration the support it had received.

34. The CHAIRMAN suggested that article 23 should be adopted ad referendum with due account taken of the Turkish position, and that the article should be given further consideration if Turkey managed to garner support for its proposal from a majority of delegations.

35. It was so decided.

Article 24

36. Mr. CAFLISCH (Observer for Switzerland) withdrew the proposal to omit article 24, as reflected in footnote 34 of the report of the Drafting Committee.

37. Mr. AMARE (Ethiopia) reiterated his proposal to replace "shall enter into" by "may enter into" because, in view of the difficulties which could arise in managing international watercourses, the holding of consultations on that matter, particularly at the request of another State, should be an option and not an obligation.

38. Mr. RAO (India) asked whether article 24 duplicated article 8 regarding the general obligation to cooperate.

39. Mr. ROSENSTOCK (Expert Consultant) explained that, in the Drafting Committee's version, article 8 was confined to setting forth a general obligation, whereas article 24 was more precise and proposed implementing measures. In any case, the phrase "shall enter into" referred to consultations and not to the establishment of a joint management mechanism.

40. The CHAIRMAN, supported by Mr. KUOKKANEN (Finland), referred the representative of Ethiopia to paragraph 2 of the commentary of the International Law Commission, which stated that article 24 did not oblige States to "manage" watercourses or establish a joint organization but simply requested them to consult.

41. Mr. ISKIT (Turkey) wondered whether, in view of the explanation provided by the Expert Consultant, it might not be appropriate to review article 24 when the final version of article 8 had been adopted.

42. Mr. KASME (Syrian Arab Republic) said that he favoured retaining the text as it currently stood, but would appreciate a definition of the important concept of optimal utilization contained in paragraph 2, subparagraph (b).

43. Mr. AMARE (Ethiopia) said that, in the light of the explanations provided by the Chairman and the Expert Consultant, he was prepared to withdraw his proposal, but he reserved the right to intervene in the debate when article 8 was considered in its entirety.

44. Ms. GAO Yanping (China) said that she would be grateful for clarification on the use of the word "rational", since it was the first occurrence of that word in the draft convention. She also wished to know how it differed in meaning from the word "optimal". Moreover, she considered that, in so far as the wording of that article was close to that of article 5, it would be desirable to harmonize their respective provisions.

45. Mr. ROSENSTOCK (Expert Consultant) referred the representative of China to paragraph 3 of the commentary of the International Law Commission on article 24, which answered her question.

46. The CHAIRMAN suggested that article 24 should be adopted ad referendum, taking account of the wishes of Turkey and India that it should be reviewed following the completion of the discussion of article 8.

47. It was so decided.

48. Mr. PRANDLER (Hungary) asked whether the word "flow", as used in article 25, referred solely to the flow itself, or also to the quantity of water involved; that had been the cause of many disputes among States, and if the latter was meant, the problem of controlling that flow would arise.

49. Mr. ROSENSTOCK (Expert Consultant) referred the representative of Hungary to the commentary of the International Law Commission on article 25, which was perfectly clear: that the regulation of the flow of water courses could be necessary on the one hand, and that their flow could have harmful effects on the other, demonstrated the importance of cooperation among States. In no case did article 25 encourage the adoption of unilateral measures, and still less the adoption of measures that could harm another State.

50. Mr. SVIRIDOV (Russian Federation) noted that his reservation regarding the verb "control" had to do with the potential ambiguity of the Russian translation of that term. His delegation had submitted to the Secretariat a proposal intended to avoid the risk of such ambiguity.

51. The CHAIRMAN asked the representative of the Russian Federation if his proposal would affect versions in languages other than Russian.

52. Mr. SVIRIDOV (Russian Federation) said that he was unable to comment on that point. The Working Group could either wait until his proposal had been translated or adopt it immediately, as it did not fundamentally modify the article.

53. The CHAIRMAN suggested that article 25 should be adopted ad referendum, on the understanding that the Russian-language version would be modified in accordance with the proposal of the Russian Federation.

54. It was so decided.

Articles 26, 27 and 28

55. The CHAIRMAN suggested that articles 26, 27 and 28 should be adopted ad referendum, with the proviso that it would eventually be necessary to return to note 38 of article 26.

56. It was so decided.

Article 29

57. Ms. BARRETT (United Kingdom) recalled that during the previous session, her delegation had proposed, in document A/C.6/NUW/WG/CRP.74, a new formulation of the text of article 29. Not wishing to provoke a tedious debate, she proposed taking note of the commentary of the International Law Commission to the effect that article 29 was without prejudice to existing law, and deleting that article. Doing so would have the advantage of avoiding both redundancies and the complications arising from the United States proposal to provide for exceptions to article 33.

58. Mr. ENAYAT (Islamic Republic of Iran) said that he was in favour of retaining the text of article 29 proposed by the International Law Commission and adopted by the Drafting Committee in October. It had then been clear from the discussions of the Drafting Committee that, as explained by the International Law Commission in paragraph 1 of its commentary, article 29 simply served as a reminder of the important provisions of the principles and rules of international and domestic law concerning international watercourses and related works.

59. Mr. KASME (Syrian Arab Republic), Mr. AL-WITRI (Iraq) and Mr. AMER (Egypt) said they would like the text under discussion to be maintained unchanged. Mr. Al-Witri explained that article 29 simply set forth a rule included in the 1949 Geneva Conventions. Mr. Amer added that in view of the importance of water for survival, there was no point in confirming via article 29 that the protection extended to civilians by a well-known rule of customary international law applied to the vital resource of watercourses.

60. Mr. RAO (India) said he approved of the substance of the text under discussion, and wished to propose a purely editorial change involving the replacement of the words "international and internal armed conflicts" by "international and non-international armed conflicts", which was the expression used in a number of relevant treaties.

61. Mr. HARRIS (United States of America) said that he was not able to support the amendment proposed by India without seeking instructions from his Government. His delegation was absolutely determined that article 29 should not have the slightest effect on the substantial body of armed conflict law. In that regard, the representative of the United Kingdom had shown the prudent course by proposing to delete the article entirely.

62. Mr. AMER (Egypt) and Ms. GAO Yanping (China), also referring to the amendment proposed by the Indian delegation, expressed their preference for the adjective "non-international", which had been used in other conventions. They were nevertheless ready to be flexible and could accept the retention of the wording under discussion.

63. Mr. CAFLISCH (Observer for Switzerland) and Mr. SALINAS (Chile) said that the two adjectives in question were absolutely synonymous and that they had no preference in the matter.

64. Mr. ROSENSTOCK (Expert Consultant) recalled that, according to paragraph 2 of the commentary of the International Law Commission, the principles and rules of international law that were "applicable" in a particular case were those that were binding on the States concerned. Insofar as article 29 was without prejudice to existing law and did not create any obligation, the issue of whether or not it should be kept was more a matter of taste and political instinct than a juridical issue. With regard to the terminology used, the expression "non-international conflicts" was certainly more common than "internal conflicts", but in so far as article 29 was totally without actual juridical force, the terms in question were interchangeable.

65. Mr. WELBERTS (Germany) said that his delegation had no difficulty with article 29, but would also not oppose the deletion of that article, on condition that the summary record of the meeting mentioned the consensus on the content of the article and the fact that it merely constituted a reminder of international customary law.

66. Ms. GAO Yanping (China), Mr. CAFLISCH (Observer for Switzerland), Mr. JABER (Lebanon), Mr. SALINAS (Chile) and Mr. PASTOR RIDRUEJO (Spain) said that they favoured maintaining article 29 unchanged; although merely a simple reminder, it confirmed a very important rule of international customary law and contained well balanced wording. The observer for Switzerland warned against the temptation to palliate the absence of consensus by too-frequent references to the summary records of meetings. The representative of Chile, for his part, said that article 29 was not the only one making reference to other standards of international law. Article 23, for example, referred to generally accepted international rules and standards with regard to the protection and preservation of the marine environment.

67. Mr. HARRIS (United States of America) said that the Chairman of the Drafting Committee, in his report on the October 1996 session, had cited the clarifications provided by the International Law Commission, which made it apparent that the article neither modified nor amended existing normative instruments, and was not intended to extend the application of any instrument to States that were not parties thereto. Insofar as the useful commentary of the

International Law Commission had been approved by all, it might be useful for the summary records of the current work, and indeed the Chairman's report, to reflect that approval. In that case, his delegation would not oppose the adoption of the text under discussion, without changes. However, he reiterated that he could not accept the amendment proposed by the representative of India without first seeking instructions from his Government.

68. Mr. LAMMERS (Chairman of the Drafting Committee) pointed out that, in its proposals submitted in conference room paper A/C.6/51/NUW/WG/CRP.1, the United States of America used the term "non-international".

69. Ms. BARRET (United Kingdom) said that she too would have to consult her Government regarding the Indian proposal. She would be prepared to agree to the text as it stood if the explanation by the Chairman of the Drafting Committee referred to by the delegation of the United States of America appeared in the final report on the session.

70. Mr. RAO (India) said that the object of his proposal, which had no substantive effect, had been to avoid causing any concern to delegations regarding the fact that the traditional terminology had not been used.

71. The CHAIRMAN said that the remarks of the Chairman of the Drafting Committee, as referred to by the United States delegation, were contained in paragraph 41 of the summary record of the twenty-fourth meeting (A/C.6/51/SR.24). Since it was agreed that article 29 was merely a reminder of existing rules and principles and that many delegations believed that that reminder should appear in the Convention, he suggested that the Working Group should adopt draft article 29 ad referendum, on the understanding that that adoption would be accompanied by a statement reproducing paragraph 41 of the summary record, and that delegations which wished to do so could consult their Governments about the term "non-international".

72. It was so decided.

Articles 30 and 31

73. Articles 30 and 31 were adopted ad referendum.

Article 32

74. Mr. GONZALES (France) said that his Government's reservation expressed in note 40 was mainly intended to call attention to the changes made to the text of article 32 compared to the initial version adopted by the International Law Commission, particularly concerning the removal of the phrase "place where the injury occurred" from the factors of non-discrimination. If all delegations were fully aware of the consequences of that change, he would be prepared to withdraw the reservation.

75. Mr. CAFLISCH (Observer for Switzerland) said he failed to understand why the factor mentioned by the representative of France had been deleted from article 32. He urged all delegations to give careful consideration to the consequences of that deletion.

76. Mr. PASTRO RIDRUEJO (Spain), Mr. DEKKER (Netherlands), Mr. KASME (Syrian Arab Republic) and Mr. AL-WITRI (Iraq) said that they preferred the initial text as presented by the Commission, which mentioned the place where the injury occurred. Mr. CANCHOLA (Mexico) said that that was very important for the settlement of disputes. Mr. CANELAS de CASTRO (Portugal) said that, for practical reasons, it would be better for the object of the article to be broad rather than limited.

77. Mr. RAO (India) said that his country's reservation to article 32 was based on the fact that the principles which it covered admittedly worked well in economic systems which were integrated on a regional basis but were still evolving. Their automatic and quasi-obligatory application would in any case be unwise in regions where economic integration was less advanced, where legal systems were different, and where States had agreed on appropriate forms of recourse through bilateral agreements. A framework convention should not go into such detail or give effect to concepts which were still evolving. His delegation's reservation remained valid.

78. The CHAIRMAN said that India's reservation was duly noted. He recalled that the text submitted by the Commission had been modified by the Drafting Committee in two respects: the phrase "or place where the injury occurred" had been deleted and the expression "under its jurisdiction" had been replaced by "in its territory". He also noted that most delegations, if not all, seemed to prefer to revert to the Commission's initial text.

79. Mr. LAMMERS (Chairman of the Drafting Committee) said that the changes introduced by the Drafting Committee were intended to make the Commission's text more comprehensible, not to change its meaning.

80. Mr. SVIDIROV (Russian Federation) said that his delegation, which had proposed a different text for the draft article, was prepared to adopt the new version produced by the Drafting Committee, which was the result of long discussions, but could not agree to starting over again from scratch.

81. Ms. GAO Yanping (China) said that her delegation would have to seek new instructions from its Government if the Committee decided to revert to the initial text of the International Law Commission.

82. Ms. BARRET (United Kingdom) recalled that at the previous meeting of the Working Group, the phrase "place where the injury occurred" had been the subject of intense discussions, because under certain legal systems and with certain rules on conflicts of jurisdiction, the idea of "place" had to be taken into account; indeed, in those countries, the inclusion of that element among the factors of non-discrimination could lead to difficulties. That was true in countries with a common-law system, such as the United Kingdom. Some delegations would have preferred the greater simplicity of the Russian proposal, but in the end a compromise had been reached to retain the structure of the Commission's text, subject to the deletion of the phrase "place where the injury occurred". She believed that it would be wiser to settle for that compromise.

83. Mr. SALINAS (Chile) agreed that it might be unwise to give equal weight to nationality, place of residence and the place where the injury occurred. It

would be best either to retain the version produced by the Drafting Committee, or to find a formula which would take account of the problems expressed by the United Kingdom in that regard.

84. Mr. CAFLISCH (Observer for Switzerland) observed that the note on article 32 specified that two countries had stated their preference for the initial text as drafted by the International Law Commission. There had therefore been no agreement on the version produced by the Drafting Committee. In any case, the latter version did not exclude the first, since both were still before the Working Group.

85. Mr. GONZALES (France) said that certain delegations' apprehension was certainly understandable, but the expression "in accordance with its legal system", which also appeared in the Commission's version, should satisfy those concerns. Also, article 32 concerned the principle of non-discrimination, and could in no case impose upon a State rules for determining jurisdiction which were different from its own.

86. The CHAIRMAN noted that many delegations wished to revert to the initial text as submitted by the Commission, whereas others wished to consult their Governments on the issue. The reservations of certain delegations had been duly noted. It would be preferable to postpone any decision on article 32 and, if informal consultations did not produce another solution, to resume consideration of that article on the basis of the initial text as produced by the International Law Commission.

87. It was so decided.

The meeting rose at 5.40 p.m.